

CHAPTER 23-33 GROUND WATER PROTECTION

23-33-01. Degradation prevention program - Maintenance of waters. This chapter establishes a degradation prevention program for the purpose of protecting ground water resources, encouraging the wise use of agricultural chemicals, providing for ground water protection, providing for public education regarding preservation of ground water resources, and providing for safe disposal of wastes in a manner that will not endanger the state's ground water resource. Waters of the state must be maintained within standards established under this chapter unless it can be affirmatively demonstrated that a change in quality is justifiable to provide necessary economic or social development and will not adversely affect the beneficial uses of water.

23-33-02. Administration of chapter. The state department of health shall administer this chapter. For purposes of this chapter, "commissioner" means the agriculture commissioner and "department" means the state department of health. Notwithstanding section 4-35-06, the agriculture commissioner shall administer chapter 4-35 as it relates to pesticide usage.

23-33-03. Education program. The department, the commissioner, and the North Dakota state university extension service and North Dakota agricultural experiment station shall cooperate with other state and federal agencies on the development of a ground water protection education program.

23-33-04. Chemical use data and confidentiality requirement. The department may require chemical use data from product registrants on products that have been or may likely be found in ground water in order to conduct its ground water protection program. This information must include chemical registration data and sales information. The department shall keep this information confidential.

23-33-05. Ground water standards. The department shall establish standards for compounds in ground water as set forth by other states and the United States environmental protection agency unless new scientifically confirmed data provides justification for changing these standards.

23-33-06. Ground water quality monitoring. The department shall conduct ground water quality monitoring activities in cooperation with the state engineer and other state agencies. Based on monitoring results, the department shall implement or require appropriate mitigation activities or remedial action to prevent future contamination of ground water. The commissioner may implement or require appropriate mitigation activities pursuant to chapter 4-35 to prevent future contamination of ground water as it relates to the use of pesticides.

23-33-07. Notification requirement. Any person with verifiable information on the presence of contamination of ground water within the state shall notify the department regarding such contamination.

23-33-08. Access for ground water monitoring. The department may request landowners or operators to allow access for monitoring of ground water and of soils at a depth where pesticides may threaten ground water. If the department is denied access by the landowner or operator, the department may apply to any court of competent jurisdiction for authorization to obtain access. The court, upon such application and upon compliance with chapter 29-29.1, may issue the authorization for the purposes requested. After consultation with the landowner or operator, the department shall conduct the monitoring in a manner that causes the least possible economic impact or hindrance to the landowner's or operator's operations. The names and addresses of landowners and operators who participate in a ground water monitoring program may not be linked, in any public disclosure, to the findings of the program unless it is determined by rule that a compelling public interest justifies such disclosure. Without such a determination, disclosure of the information is a violation of section 12.1-13-01.

23-33-09. Pollution prevention criteria. The commissioner, in cooperation with the department, North Dakota state university extension service, and the North Dakota agricultural experiment station, may develop pollution prevention criteria for areas utilized for mixing and storing of agricultural chemicals at the retail and end use levels.

23-33-10. Wellhead protection program. The department in cooperation with the state engineer and state geologist shall assist in implementing a public water supply wellhead protection program for protection of ground water resources utilizing existing state and local statutory authority.

23-33-11. Rules. The department, with the approval of the commissioner and the state engineer, shall adopt rules necessary for implementation of this chapter.

23-33-12. Producer liability. Liability may not be imposed upon an agricultural producer for costs of active cleanup, or for any damage associated with or resulting from the detection in ground water, of a pesticide if the applicator has complied with label instructions and other precautions for application of the pesticide and the applicator has a valid appropriate applicator's certification. Compliance with these requirements may be raised as an affirmative defense by an agricultural producer.